

AMENDED IN SENATE APRIL 28, 2010

AMENDED IN SENATE APRIL 8, 2010

SENATE BILL

No. 1275

Introduced by Senators Leno and Steinberg
(Principal coauthor: Assembly Member Caballero)

February 19, 2010

An act to amend Section 2923.5 of, and to add and repeal Sections 2923.4, 2923.7, 2923.73, and 2923.75 of, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1275, as amended, Leno. Mortgages: foreclosures.

Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor. Existing law provides that, after not less than 3 months after the filing of the notice of default, the parties described above may give notice of sale, stating the time and place of the sale, as specified.

Existing law, until January 1, 2013, and as applied to mortgages and deeds of trust recorded between January 1, 2003, and December 31, 2007, that are secured by owner-occupied residential real property containing no more than 4 dwelling units, requires a mortgagee, trustee, beneficiary, or authorized agent to contact the borrower, as defined, prior to filing a notice of default, in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. Existing law requires the notice of default to include a

specified declaration from the mortgagee, beneficiary, or authorized agent regarding its contact with the borrower.

This bill would, until January 1, 2013, extend those requirements to apply to mortgages or deeds of trust recorded prior to January 1, 2009, that are secured by owner-occupied residential real property containing no more than 4 dwelling units. The bill would require a mortgagee, ~~trustee~~, beneficiary, or authorized agent, within a specified time period prior to the filing of a notice of default, to provide the borrower with written information regarding loan modifications and a specified notice regarding the borrower's rights during the foreclosure process, subject to specified exceptions. The bill would require an unspecified state entity to make that notice available in English and specified languages. The bill would further revise the borrower contact requirements described above by requiring a mortgagee, beneficiary, or authorized agent to make reasonable borrower solicitation efforts, as specified, to explore options for the borrower to avoid foreclosure. The bill would prohibit a mortgagee, *trustee*, beneficiary, or authorized agent from filing a notice of default until these solicitation efforts have failed or the borrower has been evaluated and determined to be ineligible for a loan modification. The bill would establish time periods in which the mortgagee, beneficiary, or authorized agent is required to review and respond to a borrower's request for a loan modification, subject to certain exceptions.

This bill would require, until January 1, 2013, that a mortgagee, beneficiary, or authorized agent, concurrently with the filing of a notice of default, record a declaration of compliance that attests to specified facts, and mail the borrower a notice stating that the borrower solicitation requirements have been met. The bill would provide that failure to record a declaration of compliance, or failure to materially comply with these provisions, would constitute grounds for the borrower to bring an action to void the foreclosure, or to recover specified damages from the mortgagee, trustee, beneficiary, or authorized agent, if specified conditions exist.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2923.4 is added to the Civil Code, to
2 read:

1 2923.4. (a) (1) After a loan becomes 31 days delinquent, but
2 not later than 10 days after the loan becomes 60 days delinquent,
3 a mortgagee, ~~trustee~~, beneficiary, or authorized agent shall provide
4 the borrower with a copy of the notice described in subdivision
5 (b) together with written communication that describes options
6 that may be available to borrowers who are unable to afford their
7 mortgage payments and who wish to avoid foreclosure and that
8 clearly describes the process, if any is available to the borrower,
9 for applying for a loan modification.

10 (2) The written communication shall include all of the following:

11 (A) (i) If the mortgagee, ~~trustee~~, beneficiary, or authorized
12 agent is participating in the federal Making Home Affordable
13 Modification Program (HAMP) or is otherwise required to review
14 the borrower's loan under HAMP guidelines, then the written
15 communication shall clearly describe HAMP and list the documents
16 and other information the borrower is required to submit in order
17 to have the mortgagee, ~~trustee~~, beneficiary, or authorized agent
18 complete a loan modification analysis.

19 (ii) If the mortgagee, ~~trustee~~, beneficiary, or authorized agent
20 is not participating in HAMP and is not otherwise required to
21 review the borrower's loan under HAMP guidelines, then the
22 written communication shall clearly describe the loan modification
23 program or programs available to the borrower, if any, and list the
24 documents and other information the borrower is required to submit
25 in order to have the mortgagee, ~~trustee~~, beneficiary, or authorized
26 agent complete a loan modification analysis. If no programs are
27 available to the borrower, the written communication shall state
28 that fact.

29 (B) A toll-free telephone number that will provide access to a
30 live representative during business hours for borrowers who wish
31 to discuss options for avoiding foreclosure with their mortgagee,
32 beneficiary, or authorized agent.

33 (C) The Internet Web site address, if any, of the mortgagee,
34 beneficiary, or authorized agent, where a borrower may obtain the
35 following information:

36 (i) Options that may be available to borrowers who are unable
37 to afford their mortgage payments and who wish to avoid
38 foreclosure, and instructions to borrowers advising them of steps
39 to take to explore those options.

(ii) A list of information and documents borrowers should collect and be prepared to present to the mortgagee, beneficiary, or authorized agent when discussing options for avoiding foreclosure.

(iii) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgagee, beneficiary, or authorized agent.

(iv) The toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD certified housing counseling agency.

(b) A state government entity shall create the following notice in at least 12-point type and make it available in English and the languages set forth in subdivision (b) of Section 1632:

“Important Notice Regarding Your Rights and Foreclosure Avoidance Options: California law requires that you receive this notice of your legal rights before the foreclosure process begins.

ARE YOU HAVING TROUBLE PAYING YOUR MORTGAGE?

If you are having trouble paying your mortgage, you should contact your loan servicer as soon as possible to discuss options for avoiding foreclosure. Your loan servicer is the company listed on your mortgage bills as the party to which your mortgage payment should be sent.

You may also call [1-800-xxx-xxxx] to find a housing counseling agency certified by the United States Department of Housing and Urban Development (HUD) that offers free services in your area.

POTENTIAL FORECLOSURE AVOIDANCE OPTIONS

One potential option for avoiding foreclosure is a loan modification. Your loan servicer may be participating in the federal loan modification program called the Home Affordable Modification Program (HAMP), which has specific requirements and guidelines. To see if your servicer is participating, or to find out more about this program, visit http://www.makinghomeaffordable.gov/contact_servicer.html.

Your servicer may offer other loan modification programs instead of or in addition to HAMP. You may also qualify for other options for avoiding foreclosure, including loan refinancing, a temporary forbearance, short sale, or a deed in lieu of foreclosure.

With this notice, you should have received a letter from your servicer that describes options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure. That letter describes any loan modification programs available to you and the steps you must take to apply for a loan modification.

If you are interested in applying for a loan modification, you must submit the required documentation to your mortgage servicer as soon as possible. Be sure to read and carefully review any communication from your mortgage servicer, and submit all of the forms, documents, and information required by the deadlines indicated in the servicer's communications. If you submit all of the forms, documents, and information required for a loan modification evaluation by the specified deadlines, your servicer must review your application and inform you of its decision before initiating the foreclosure process by filing a document called a Notice of Default. If your servicer denies your request for a loan modification, it must send you a detailed letter that explains the reason(s) for the denial and provides you with information about how to dispute the denial.

THE FORECLOSURE PROCESS

If your servicer denies your application and complies with the contact and notice requirements described in Sections 2923.5 and 2923.73 of the Civil Code, it may proceed with the foreclosure process.

Notice of Default: Your loan servicer may not foreclose on your home without filing official documents with the county recorder. You are entitled to receive copies of those documents. The first step in the foreclosure process is the filing of a notice of default. If your loan servicer records a notice of default on your loan, it must mail you a copy of that notice by certified mail and must wait at least 90 days before taking further steps to sell your home.

Notice of Sale: Once 90 days have passed from the filing of the notice of default, your servicer may file a notice of sale. ~~If your servicer has not received an exemption from the California Foreclosure Prevention Act (CFPA), it must wait an additional 90 days (for a total of 180 days) after filing the notice of default before filing a notice of sale. A list of servicers with exemptions under the CFPA is available at~~ <http://www.corp.ca.gov/FSD/CFP/pdf/ExemptList.pdf>,

1 ~~http://www.dfi.ca.gov/cfpa/default.asp, _____ and~~
2 ~~http://www.dre.ca.gov/ind_cfpa_exemplist.asp. Your servicer~~
3 ~~must~~ *Your servicer must* post the notice of sale on your property,
4 mail you a copy of the notice by certified mail, and wait at least
5 20 days before selling your home. Your notice of sale will include
6 the contact information of the person or company to call if you
7 want more information about your sale date. You should make
8 note of that contact information and be sure to check for any
9 changes to the sale date.

10 Please seek legal help if you believe that you have been denied
11 your legal foreclosure rights. It is illegal for any person, including
12 a lawyer, to charge you for helping you with a loan modification
13 or other effort to avoid foreclosure before providing the services
14 promised.”

15
16 (c) The English and translated forms of this notice shall be made
17 available on or before *January 30, 2011. A mortgagee, beneficiary,*
18 *or authorized agent shall be subject to the requirements of this*
19 *section on and after March 1, 2011, or 30 days following the*
20 *availability of the English and translated forms of the notice,*
21 *whichever occurs first, but in no event shall a mortgagee,*
22 *beneficiary, or authorized agent be subject to the requirements of*
23 *this section any earlier than January 1, 2011.*

24 (d) (1) This section shall not apply if any of the following
25 occurs:

26 ~~(1)~~

27 (A) The borrower has surrendered the property as evidenced by
28 either a letter confirming the surrender or delivery of the keys to
29 the property to the mortgagee, trustee, beneficiary, or authorized
30 agent.

31 ~~(2)~~

32 (B) The borrower has contracted with an organization, person,
33 or entity whose primary business is advising people who have
34 decided to leave their homes about how to extend the foreclosure
35 process and avoid their contractual obligations to mortgagees or
36 beneficiaries.

37 ~~(3)~~

38 (C) A case has been filed by the borrower under Chapter 7, 11,
39 12, or 13 of Title 11 of the United States Code, and the bankruptcy
40 court has not entered an order closing or dismissing the bankruptcy

1 case or granting relief from a stay of foreclosure. This shall not
2 preclude a mortgagee, trustee, beneficiary, or authorized agent
3 from soliciting or considering a borrower who is in bankruptcy
4 for a loan modification, whether under the requirements of HAMP,
5 or under its own proprietary loan modification program.

6 *(2) Nothing in this subdivision shall be construed to alter in*
7 *any way the obligations of a mortgagee, trustee, beneficiary, or*
8 *authorized agent that is participating in HAMP or is otherwise*
9 *required to review a loan under HAMP guidelines.*

10 (e) This section shall apply only to mortgages or deeds of trust
11 recorded prior to January 1, 2009, and that are secured by
12 owner-occupied residential real property containing no more than
13 four dwelling units. For purposes of this subdivision,
14 “owner-occupied” means that the residence is the principal
15 residence of the borrower as indicated to the lender in loan
16 documents.

17 (f) This section shall remain in effect only until January 1, 2013,
18 and as of that date is repealed, unless a later enacted statute, that
19 is enacted before January 1, 2013, deletes or extends that date.

20 SEC. 2. Section 2923.5 of the Civil Code is amended to read:

21 2923.5. (a) A mortgagee, trustee, beneficiary, or authorized
22 agent may not file a notice of default pursuant to Section 2924
23 until the requirements of this section and Sections 2923.4, 2923.7,
24 and 2923.73 have been satisfied.

25 (b) For all first lien mortgage loans described in subdivision (i)
26 and not excluded by subdivision (h), a notice of default may not
27 be filed until reasonable borrower solicitation efforts have failed
28 or a borrower who applies for a loan modification has been
29 evaluated and determined to be ineligible for a loan modification.
30 If a mortgagee, trustee, beneficiary, or authorized agent is subject
31 to paragraph (2) and reasonable solicitation efforts have failed, the
32 mortgagee, trustee, beneficiary, or authorized agent shall not file
33 a notice of default until at least 30 days after ~~complying with the~~
34 *making* reasonable solicitation efforts.

35 (1) If the mortgagee, trustee, beneficiary, or authorized agent
36 is participating in the Making Home Affordable Modification
37 Program (HAMP) or is otherwise required to review the borrower’s
38 loan under HAMP guidelines, compliance with all borrower
39 outreach and loan application review procedures and timelines set
40 forth in the applicable HAMP guidelines shall constitute reasonable

1 borrower solicitation efforts. The notice and written communication
2 required by Section 2923.4 may be used to satisfy one of the
3 applicable written borrower outreach requirements of this
4 paragraph.

5 (2) If the mortgagee, trustee, beneficiary, or authorized agent
6 is not participating in HAMP and is not otherwise required to
7 review the borrower's loan under HAMP guidelines, compliance
8 with all of the following shall constitute reasonable borrower
9 solicitation efforts:

10 (A) A mortgagee, beneficiary, or authorized agent shall contact
11 the borrower in person or by telephone in order to assess the
12 borrower's financial situation and explore options for the borrower
13 to avoid foreclosure. This in-person or telephone communication
14 shall be clearly identified as an attempt to initiate discussion with
15 the borrower about foreclosure avoidance options, and may not
16 include a demand for immediate payment of any past-due amounts
17 owed by the borrower. During the initial telephone contact, the
18 mortgagee, beneficiary, or authorized agent shall advise the
19 borrower that he or she has the right to request a subsequent
20 meeting and, if requested, the mortgagee, beneficiary, or authorized
21 agent shall schedule the meeting to occur within 14 days. The
22 assessment of the borrower's financial situation and discussion of
23 options may occur during the first contact, or at the subsequent
24 meeting scheduled for that purpose. In either case, the borrower
25 shall be provided the toll-free telephone number made available
26 by the United States Department of Housing and Urban
27 Development (HUD) to find a HUD-certified housing counseling
28 agency. Any meeting may occur telephonically.

29 (B) A mortgagee, beneficiary, or authorized agent shall send *to*
30 *the borrower* the written communication and notice ~~described in~~
31 ~~required by Section 2923.4 to the borrower.~~

32 (C) (i) After the written communication and notice described
33 in Section 2923.4 have been sent, the mortgagee, beneficiary, or
34 authorized agent shall attempt to contact the borrower in person
35 or by telephone in order to assess the borrower's financial situation
36 and explore options for the borrower to avoid foreclosure.

37 (ii) In order to make this contact, a mortgagee, beneficiary, or
38 authorized agent shall attempt to contact a borrower by telephone
39 at least three times at different hours and on different days.
40 Telephone calls shall be made to the last known telephone numbers

1 of record. These communications and attempted communications
2 shall be clearly identified as attempts to initiate discussion with
3 the borrower about foreclosure avoidance options, and may not
4 include a demand for immediate payment of any past-due amounts
5 owed by the borrower.

6 (iii) A mortgagee, beneficiary, or authorized agent may attempt
7 to contact a borrower using an automated system to dial borrowers,
8 provided that, if the telephone call is answered, the call is
9 connected to a live representative of the mortgagee, beneficiary,
10 or authorized agent.

11 (iv) A mortgagee, beneficiary, or authorized agent satisfies the
12 telephone contact requirements of this paragraph if it determines,
13 after attempting contact pursuant to this paragraph, that the
14 borrower's telephone numbers on file, if any, have been
15 disconnected.

16 (D) If the borrower does not respond within two weeks after
17 the telephone call requirements of clause (ii) have been satisfied,
18 the mortgagee, beneficiary, or authorized agent shall then send a
19 certified letter, with return receipt requested.

20 (E) The mortgagee, beneficiary, or authorized agent shall
21 provide a means for the borrower to contact it in a timely manner,
22 including a toll-free telephone number that will provide access to
23 a live representative during business hours.

24 (F) The mortgagee, beneficiary, or authorized agent shall post
25 a prominent link on the homepage of its Internet Web site, if any,
26 to the following information:

27 (i) Options that may be available to borrowers who are unable
28 to afford their mortgage payments and who wish to avoid
29 foreclosure, and instructions to borrowers advising them ~~on~~ *of the*
30 steps to take to explore those options.

31 (ii) A list of financial documents borrowers should collect and
32 be prepared to present to the mortgagee, beneficiary, or authorized
33 agent when discussing options for avoiding foreclosure.

34 (iii) A toll-free telephone number for borrowers who wish to
35 discuss options for avoiding foreclosure with their mortgagee,
36 beneficiary, or authorized agent.

37 (iv) The toll-free telephone number made available by HUD to
38 find a HUD-certified housing counseling agency.

(c) A mortgagee, *trustee*, beneficiary, or authorized agent, concurrently with the filing of a notice of default, shall do both of the following:

(1) Record a declaration of compliance pursuant to Section 2923.7. The declaration may be included as part of or attached to the notice of default.

(2) Mail the borrower a notice stating that the requirements of subdivision (b) have been met. That notice shall be sent by certified mail and shall include the dates and times of, and addresses and telephone numbers used for, the contact or attempted contact required by subdivision (b).

(d) If a mortgagee, trustee, beneficiary, or authorized agent had already filed the notice of default prior to the ~~enactment of this section~~ *effective date of the amendment to this section at the 2009–10 Regular Session of the Legislature* and did not subsequently file a notice of rescission, then the mortgagee, trustee, beneficiary, or authorized agent shall, as part of the notice of sale filed pursuant to Section 2924f, include a declaration that the mortgagee, trustee, beneficiary, or authorized agent satisfied the requirements of Section 2923.73 at least 45 days before filing the notice of sale.

(e) A mortgagee's, beneficiary's, or authorized agent's loss mitigation personnel may participate by telephone during any contact required by this section.

(f) For purposes of this section, a "borrower" shall include a mortgagor or trustor.

(g) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgagee, beneficiary, or authorized agent, on the borrower's behalf, ~~the borrowers~~ *borrower's* financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of *paragraph (2) of* subdivision (b). Any loan modification or workout plan offered at the meeting by the mortgagee, beneficiary, or authorized agent is subject to approval by the borrower.

(h) *(1)* Subdivisions (a) and (b) shall not apply if any of the following occurs:

(+)

1 (A) The borrower has surrendered the property as evidenced by
2 either a letter confirming the surrender or delivery of the keys to
3 the property to the mortgagee, trustee, beneficiary, or authorized
4 agent.

5 (2)

6 (B) The borrower has contracted with an organization, person,
7 or entity whose primary business is advising people who have
8 decided to leave their homes on how to extend the foreclosure
9 process and avoid their contractual obligations to mortgagees or
10 beneficiaries.

11 (3)

12 (C) A case has been filed by the borrower under Chapter 7, 11,
13 12, or 13 of Title 11 of the United States Code and the bankruptcy
14 court has not entered an order closing or dismissing the bankruptcy
15 case, or granting relief from a stay of foreclosure. This shall not
16 preclude a mortgagee, trustee, beneficiary, or authorized agent
17 from soliciting or considering a borrower who is in bankruptcy
18 for a loan modification, whether under the requirements of HAMP,
19 or under its own proprietary loan modification program.

20 (2) *Nothing in this subdivision shall be construed to alter in*
21 *any way the obligations of a mortgagee, trustee, beneficiary, or*
22 *authorized agent that is participating in HAMP or is otherwise*
23 *required to review a loan under HAMP guidelines.*

24 (i) This section shall apply only to mortgages or deeds of trust
25 recorded prior to January 1, 2009, that are secured by
26 owner-occupied residential real property containing no more than
27 four dwelling units. For purposes of this subdivision,
28 “owner-occupied” means that the residence is the principal
29 residence of the borrower as indicated to the lender in loan
30 documents.

31 (j) This section shall remain in effect only until January 1, 2013,
32 and as of that date is repealed, unless a later enacted statute, that
33 is enacted before January 1, 2013, deletes or extends that date.

34 SEC. 3. Section 2923.7 is added to the Civil Code, to read:

35 2923.7. (a) (1) In order to initiate the foreclosure process, a
36 mortgage servicer ~~must~~ *shall* transmit to the foreclosure trustee a
37 declaration of compliance that is signed on behalf of the mortgage
38 servicer by an individual having personal knowledge of the facts
39 stated within. The declaration of compliance shall be included as
40 part of, or attached to every notice of default filed pursuant to

1 Section 2924. A notice of default that does not include a declaration
2 of compliance shall not be valid.

3 (2) The declaration of compliance shall be substantially similar
4 to the following form:

5
6 DECLARATION OF COMPLIANCE
7 BORROWER CONTACT
8

9 ☐ *The mortgagee, beneficiary, or authorized agent is participating in the*
10 *Making Home Affordable Modification Program (HAMP) or is otherwise*
11 *required to review this loan under HAMP guidelines.*
12

13 ☐ *The mortgagee, beneficiary, or authorized agent is not participating in*
14 *HAMP or is not otherwise required to review this loan under HAMP guidelines.*
15

16 ☐ This loan is not subject to Cal. Civil Code Sec. 2923.5,
17 pursuant to the following provisions (check all that apply):
18

19 ☐ Cal. Civil Code Sec. 2923.5(h).
20

21 ☐ Cal. Civil Code Sec. 2923.5(i).
22

23 ☐ This loan is subject to Cal. Civil Code Sec. 2923.5, and the
24 mortgagee, beneficiary, or authorized agent has complied with the
25 requirements of Cal. Civil Code Sec. 2923.5 by doing the following
26 (check all that apply):
27

28 ☐ Satisfying the applicable reasonable borrower solicitation efforts described
29 in Cal. Civil Code Sec. 2923.5(b). If checked, insert the date that the reasonable
30 borrower solicitation efforts were completed here: _____
31

32 ☐ Sending the letter required by Cal. Civil Code Sec. 2923.5(c).
33

34 ☐ Sending the notice and written communication described in Cal. Civil Code
35 Sec. ~~2923.6~~ 2923.4 during the time period set forth in that section.
36

37 FORECLOSURE AVOIDANCE REVIEW

38 ☐ This loan is not subject to Cal. Civil Code Sec. 2923.73,
39 pursuant to the following provisions (check all that apply):

1 ☐ Cal. Civil Code Sec. 2923.73(d).

3 ☐ Cal. Civil Code Sec. 2923.73(e).

5 ☐ This loan is subject to Cal. Civil Code Sec. 2923.73 and (check
6 only one):

8 ☐ The borrower was evaluated for a loan modification and was determined to
9 be ineligible for any loan modification program, and the mortgagee, beneficiary,
10 or authorized agent sent the borrower a denial explanation letter in compliance
11 with the requirements of Cal. Civil Code Sec. 2923.73(a).

13 ☐ The borrower did not submit all required written application materials and
14 documentation by the applicable deadline.

16 ~~☐ The borrower did not respond to the reasonable solicitation efforts of the
17 mortgagee, beneficiary, or authorized agent by the applicable deadline.~~

19 ~~☐ The borrower was offered a trial period loan modification plan, but the
20 borrower did not accept the trial period loan modification plan or failed to
21 comply with the terms of the plan.~~

23 ☐ *The mortgagee, beneficiary, or authorized agent made the applicable
24 reasonable efforts described in Cal. Civil Code Sec. 2923.5(b), but failed to
25 establish contact with the borrower.*

27 ☐ *The borrower was offered a HAMP trial period plan, but the borrower did
28 not accept the trial period plan or failed to comply with the terms of the plan.*

30 ☐ The borrower was offered a permanent loan modification, but the borrower
31 did not accept the modification offered ~~or did not comply with the terms of~~
32 ~~the modification.~~

34 ☐ *The borrower was offered a permanent loan modification, but the borrower
35 failed to comply with the terms of the modification.*

37 ☐ The borrower has communicated to the mortgagee, beneficiary, or authorized
38 agent that he or she is not interested in pursuing a loan modification.
39

(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 4. Section 2923.73 is added to the Civil Code, to read:

2923.73. (a) If a borrower expresses an interest in applying for a loan modification either verbally or in writing, and the mortgagee, beneficiary, or authorized agent ~~does not offer the borrower a trial or permanent loan modification according to applicable program guidelines~~ *denies either a permanent loan modification or a HAMP trial period plan*, the mortgagee, beneficiary, or authorized agent shall send the borrower a denial explanation letter by certified mail no later than 10 business days following the denial decision.

(1) If a borrower fails to provide all required verification documents or information by the applicable deadline as set forth in subdivision (b), the letter shall indicate the date by which the documents or information were to be provided, list the documents or information that were not provided, and state that the borrower's request for a loan modification has been denied for this reason.

(2) If a borrower submits all required written application materials for a loan modification by the applicable deadline as set forth in subdivision (b), and the application is denied, the denial explanation letter shall include all of the following in plain English or one of the languages set forth in subdivision (b) of Section 1632, as appropriate:

(A) The date a completed application for a loan modification was received from the borrower.

(B) The date on which a decision was made regarding the borrower's application.

(C) The final decision made by the mortgagee, beneficiary, or authorized agent, which shall indicate each loan modification program for which the borrower was considered, and the decision made with respect to each loan modification program.

(D) If the mortgagee, beneficiary, or authorized agent was required to consider the borrower for a loan modification under the federal Making Home Affordable Modification Program (HAMP), the information required to be provided in the borrower notice described in the federal Home Affordable Modification Guidelines Supplemental Directive 09-08, issued November 3, 2009, and any amendments thereto.

(E) If the borrower was considered for a loan modification program or programs other than HAMP, information detailing the reasons the borrower did not qualify for the program, including quantitative data supporting the decision if the decision is based on the borrower's income, expenses, or on a net present value calculation. This information may include a finding that the borrower was previously offered a loan modification and failed to successfully make payments under the terms of the modified loan.

(F) The name and contact information of the holder of the note for the borrower's loan.

(G) Instructions regarding how to dispute the decision described in the denial explanation letter.

(b) (1) If the mortgagee, ~~trustee~~, beneficiary, or authorized agent is participating in HAMP or is otherwise required to review the borrower's loan under HAMP guidelines, the deadlines for the borrower to submit information and the mortgagee, ~~trustee~~, or beneficiary to review and respond to the information the borrower has submitted are those set forth in the applicable HAMP guidelines.

(2) If the mortgagee, ~~trustee~~, beneficiary, or authorized agent is not participating in HAMP and is not otherwise required to review the borrower's loan under HAMP guidelines, the applicable deadlines are as follows:

(A) The mortgagee, ~~trustee~~, beneficiary, or authorized agent shall communicate to the borrower in each contact, both oral and written, the borrower's deadline for submitting an initial application for a loan modification, which shall not be less than 45 days from the borrower's receipt of the notice required by Section 2923.4.

(B) If a borrower submits an initial application, but does not include all the forms, documents, or information the mortgagee, ~~trustee~~, beneficiary, or authorized agent needs in order to consider the borrower for a loan modification, the mortgagee, beneficiary, or authorized agent must provide the borrower with written notice that clearly describes any supplemental documentation or information needed to consider the borrower for a loan modification, and the deadline for providing that documentation or information, which shall not be less than 25 days from the date the borrower receives the notice.

(c) After ~~sending the mortgagee, beneficiary, or authorized agent~~ sends a denial explanation letter in compliance with

1 subdivision (a), a mortgagee, *trustee*, beneficiary, or authorized
2 agent may proceed to record a notice of default and declaration of
3 compliance pursuant to Section 2923.7 even if the borrower
4 initiates a dispute relating to the denial explanation letter and the
5 dispute has not yet been resolved.

6 (d) (1) This section shall not apply if any of the following
7 occurs:

8 ~~(1)~~

9 (A) The borrower has surrendered the property as evidenced by
10 either a letter confirming the surrender or delivery of the keys to
11 the property to the mortgagee, trustee, beneficiary, or authorized
12 agent.

13 ~~(2)~~

14 (B) The borrower has contracted with an organization, person,
15 or entity whose primary business is advising people who have
16 decided to leave their homes about how to extend the foreclosure
17 process and avoid their contractual obligations to mortgagees or
18 beneficiaries.

19 ~~(3)~~

20 (C) A case has been filed by the borrower under Chapter 7, 11,
21 12, or 13 of Title 11 of the United States Code, and the bankruptcy
22 court has not entered an order closing or dismissing the bankruptcy
23 case or granting relief from a stay of foreclosure. This shall not
24 preclude a mortgagee, trustee, beneficiary, or authorized agent
25 from soliciting or considering a borrower who is in bankruptcy
26 for a loan modification, whether under the requirements of HAMP,
27 or under its own proprietary loan modification program.

28 (2) *Nothing in this subdivision shall be construed to alter in*
29 *any way the obligations of a mortgagee, trustee, beneficiary, or*
30 *authorized agent that is participating in HAMP or is otherwise*
31 *required to review a loan under HAMP guidelines.*

32 (e) This section shall apply only to mortgages or deeds of trust
33 recorded prior to January 1, 2009, that are secured by
34 owner-occupied residential real property containing no more than
35 four dwelling units. For purposes of this subdivision,
36 “owner-occupied” means that the residence is the principal
37 residence of the borrower as indicated to the lender in loan
38 documents.

(f) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 5. Section 2923.75 is added to the Civil Code, to read:

2923.75. (a) Failure to record a declaration of compliance in accordance with Section 2923.7, recordation of a false declaration of compliance pursuant to Section 2923.7, or failure to materially comply with the requirements of Section 2923.5, 2923.7, or 2923.73, shall constitute grounds for a borrower to pursue ~~either~~ *any one* of the following *applicable* options subsequent to a trustee sale conducted in accordance with Section 2924f:

(1) If the property ~~that is the subject of the declaration of compliance at issue~~ is sold to a bona fide purchaser at a trustee sale conducted in accordance with Section 2924f, the borrower may recover the greater of treble *actual* damages or statutory damages in the amount of ten thousand dollars (\$10,000) from the mortgagee, trustee, beneficiary, or authorized agent that failed to comply with Section 2923.5, 2923.7, or 2923.73.

(2) (A) If, *prior to the initiation of an action under this section*, the property that is the subject of the declaration of compliance is sold to a bona fide purchaser by the foreclosing party subsequent to a trustee sale conducted in accordance with Section 2924f in which title was transferred to the foreclosing party, the borrower may recover the greater of treble *actual* damages or statutory damages in the amount of ten thousand dollars (\$10,000) from the mortgagee, trustee, beneficiary, or authorized agent that failed to comply with Section 2923.5, 2923.7, or 2923.73.

(B) If the foreclosing party had notice of the borrower's claim under this section prior to selling the property to a bona fide purchaser, the borrower may recover the greater of treble *actual* damages or statutory damages in the amount of twenty-five thousand dollars (\$25,000) from the mortgagee, trustee, beneficiary, or authorized agent that failed to comply with Section 2923.5, 2923.7, or 2923.73. *If, however, the borrower initiated an action under this section prior to the sale to a bona fide purchaser, paragraph (3) shall apply.*

(3) If title to the property ~~that is the subject of the declaration of compliance at issue~~ is transferred to the foreclosing party at a trustee sale conducted in accordance with Section 2924f, the

1 borrower may bring an action to void the foreclosure sale, *except*
2 *if paragraph (2) applies.*

3 (b) This section shall remain in effect only until January 1, 2013,
4 and as of that date is repealed, unless a later enacted statute, that
5 is enacted before January 1, 2013, deletes or extends that date.

6 SEC. 6. The provisions of this act are not intended to be and
7 shall not be ~~deemed~~ *construed* to be retroactive.

8 SEC. 7. *Nothing in this act shall affect any cause of action or*
9 *claim that is pending as of the effective date of this act.*

10 ~~SEC. 7.~~

11 SEC. 8. The provisions of this act are severable. If any
12 provision of this act or its application is held invalid, that invalidity
13 shall not affect other provisions or applications that can be given
14 effect without the invalid provision or application.